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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/815,358 | 04/01/2004 | Carl H. Schulman | 8824-100/US | 8273 |
| 36412 | 7590 | 11/15/2006 | EXAMINER | |
| DUCKOR SPRADLING METZGER 401 WEST A STREET, SUITE 2400 SAN DIEGO, CA 92101-7915 | | | TRAN, HANH VAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3637 | |

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/815,358 | Applicant(s) SCHULMAN, CARL H. | |
| | Examiner Hanh V. Tran | Art Unit 3637 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 10, 14-18, 20, 24-28, 30 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 11-13, 19, 21-23, 29, 31, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2/22/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the First Office Action on the Merits from the examiner in charge of this application.

Election/Restrictions

2. Applicant's election with traverse of (A) Desk construction Species I and (B) Support assembly/apparatus Species I in the reply filed on 8/28/2006 is acknowledged. The traversal is on the ground(s) that no separate search need be required. This is not found persuasive because the search for one species is not required for another.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 4-8, 10, 14-18, 20, 24-28, 30, and 32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/28/2006. In regard to claims 8, 18, 28, and 32, although applicant's stated in the reply filed on 8/28/2006 that these claims encompass the elected Species, each of them includes the limitation of a "piston-cylinder assembly" which is shown in the non-elected Species of figure 20; thus claims 8, 18, 28, and 32 are withdrawn from further consideration as stated above.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation in claims 9, 19, 29, and 33 of the support assembly including a "motor" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3, 11, 13, 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 427,217 to Bancroft.

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Bancroft discloses a furniture construction comprising a housing defining an interior that is at least partially enclosed, a support assembly comprising a movable support and a supporting apparatus having a shelf 9 and at least one roller 13, at least one storage compartment (defined as one of the cabinet housing on either sides of the middle portion), wherein the support assembly is movable between a first position that is generally horizontal and a second position that is at a downwardly inclined angle at least partially within the interior of the housing.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 2, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bancroft in view of USP 5,199,773 to Price, Jr. et al.

Bancroft discloses all the elements as discussed above except for the support assembly comprising a drawer, instead of a shelf.

Price, Jr. et al teaches the idea of providing a furniture construction with a housing defining an interior, and a support assembly comprising a drawer movable between a first position that is generally horizontal and a second position that is at a downwardly inclined angle at least partially within the interior of the housing; wherein the drawer facilitates moving of article placed thereon between the first and second positions. In view of the teaching of Price, Jr. et al, it would have been obvious to modify the structure of Bancroft by replacing the shelf with a drawer in order to facilitate moving of article placed thereon between the first and second position, as taught by Price, Jr. et al, since both teach alternate conventional structure of a furniture construction with a housing, used for same intended purpose of supporting article thereon, thereby providing structure as claimed.

10. Claims 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bancroft.

Bancroft discloses all the elements recited in the above listed claims including a furniture construction comprising a housing defining an interior that is at least partially enclosed, a support assembly comprising a movable support and a supporting apparatus having a shelf 9 and at least one roller 13, at least one storage compartment (defined as one of the cabinet housing on either sides of the middle portion). The differences being that Bancroft does not disclose the method steps recited in said claims. However, since Bancroft discloses all the structural limitations recited in said claims, it would have been obvious and well within the level of one skill in the art to perform the method steps recited therein.

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11. Claims 9, 19, 29, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bancroft in view of USP 5,797,666 to Park.

Bancroft discloses all the elements as discussed above except for the support assembly including a motor structured to move the support assembly between said first and second positions.

Park teaches the idea of providing a support assembly of a furniture construction with a motor in order to facilitate moving of the support assembly between a first position that is generally horizontal and a second position that is at a downwardly inclined angle at least partially within the interior of the housing. In view of the teaching of Park, it would have been obvious to modify the structure of Bancroft by providing the support assembly with a motor in order to facilitate moving of the support assembly between the first and second positions, as taught by Park, since both teach alternate conventional support assembly of a furniture construction, thereby providing structure as claimed. In regard to the method steps recited in claim 33, since Bancroft, as modified, discloses all the structural limitations recited in said claims, it would have been obvious and well within the level of one skill in the art to perform the method steps recited therein.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gershfeld, Burhman, Ditzik, Stringfellow et al, Naess et al, Bargen, Donning, Vaaler, Rittel, and Korte all show structures similar to various elements of applicant's disclosure.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HVT
November 13, 2006

Hanh V. Tran
Art Unit 3637